

VIRGINIA CODE COMMISSION
General Assembly Building, 6th Floor
Speaker's Conference Room
Richmond, Virginia 23219

Wednesday, June 15, 2005 - 10:00 a.m.

MEMBERS PRESENT: William C. Mims, Chairman; R. Steven Landes, Vice Chairman; John S. Edwards; Robert Hurt, Robert L. Calhoun; Frank S. Ferguson S. Bernard Goodwyn; Thomas M. Moncure, Jr.; E.M. Miller, Jr.

MEMBERS ABSENT: Diane Strickland

STAFF PRESENT: Suzan Bulbulkaya, Mike Flaherty, Patricia Davis, Ken Patterson, Jane Chaffin

OTHERS PRESENT: Doug McCartney, LexisNexis; Bill Wilson, Division of Legislative Automated Systems; Susan Williams, Department of Motor Vehicles; Doug Saunders, Department of Agriculture and Consumer Services (VDACS); Perida Giles, VDACS; Richard Wilkes, VDACS; John Beers, VDACS; Ed Wilson, Milk Commission; Rodney Phillips, Milk Commission; Brooks Harrington, Department of Transportation; Brock Herzberg, Farm Bureau; Donna Pugh Johnson, Virginia Agribusiness Council; Tara McDonnell, MWC

CALL TO ORDER

Vice Chairman Steve Landes called the meeting to order at 10:15 a.m. Approval of the minutes was deferred until the arrival of a quorum. Mr. Landes proceeded with agenda item 3, Title 3.1 Recodification.

TITLE 3.1 RECODIFICATION

Chapter 52, Food and Drink Generally

Senator Calhoun asked staff if § 3.1-365, Definition of "food," should be combined into a general definitions section, possibly in Article 1 of Chapter 52, to apply to the entire chapter. It was noted that a slightly different definition of "food" is later found in Article 3 (page 10, line 19), the only difference appearing to be that the second definition includes "chewing gum." Staff will look into the possibility of developing a single definition of "food" that would apply to the entire chapter.

(The presence of a quorum was noted.)

Senator Calhoun made a motion to change "due regard" to "strict regard" on line 21 of page 2 to be consistent with the reference found on line 22. Mr. Miller seconded the motion and it carried.

Judge Goodwyn made a motion, seconded by Senator Calhoun, to strike the superfluous language "as far as may be necessary, from" in § 3.1-368 on page 3, line 18. The motion was approved. On line 19 of the same section, staff was asked to check whether the word, "section" should be changed to "article."

1 Mr. Miller commented that many of the provisions in Chapter 52 seem to be
2 regulatory in nature rather than statutory in nature. When the agency was asked
3 about this matter, Doug Saunders with VDACS advised that the agency's
4 regulations are more specific and provide more detail. Senator Calhoun agreed
5 with Mr. Miller's comment and suggested that the issue might be solved by giving
6 the agency the appropriate regulatory rulemaking authority. Staff will look into
7 this issue with VDACS.

8 In § 3.1-377 on page 5, line 22, it was noted that the use of "or suffer" in the
9 section is antiquated and the term should be deleted. Senator Calhoun made a
10 motion, seconded by Judge Goodwyn, to change "No employer shall knowingly
11 permit, require, or suffer..." to "No employer shall knowingly permit or require...."
12 The motion was approved.

13 There was discussion about § 3.1-376, which prohibits domestic animals from
14 remaining in rooms used for the manufacture or storage of food products, and
15 whether the word "domestic" and "to remain" should be deleted. Staff will bring
16 the issue before the work group. Staff was also asked to find out whether this
17 provision prohibits service dogs and, if so, staff will add an exception for them.

18 The Commission pointed out several obsolete terms in § 3.1-383 and made
19 suggestions for cleaning up the language. Suggestions include updating
20 references to peace and health officers, justice of the peace, and trial justice. On
21 line 23, staff was asked to clarify that when food is seized under this section, that
22 it be taken to the magistrate or general district or circuit court judge for the
23 jurisdiction in which the article was seized.

24 Section 3.1-384 provides a penalty for knowingly selling diseased food. The
25 section specifically mentions "actinomycosis or lumpy jaw." The Commission
26 directed staff to review the section and determine if other diseases, such as mad
27 cow disease, should be added or if "lumpy jaw" should be deleted. Staff will bring
28 a recommendation back before the Commission at a future meeting.

29 The Commission asked staff to make further changes to § 3.1-385 to modernize
30 and simplify the language. Changes include deleting "company or steamboat" on
31 line 23 of page 8, and changing lines 6, 7 and 8 on page 9 to read, "The
32 Commissioner and his duly authorized agents shall have full right to enter and
33 inspect all stores, warehouses, and any and all means or places of
34 transportation..."

35 Senator Calhoun noted that the chapter under review could be better organized.
36 He commented that the Commission should take the opportunity during the
37 recodification process to combine similar provisions that are currently scattered
38 throughout chapters. For example, staff should consider grouping and combining
39 enforcement provisions, rulemaking provisions, judicial procedures, and
40 administrative provisions. One goal of a recodification is to restructure the title in
41 a more organized manner and streamline similar provisions. Judge Goodwyn
42 pointed to an example where, in some instances, a procedure is in place to go to

1 a magistrate to issue a warrant; however, in other instances, the procedure is to
2 go to the Commonwealth's attorney, who must go to the magistrate or grand jury.
3 Without objection, the Commission moved ahead to the Milk Commission chapter
4 and asked staff to rework Chapter 52 for presentation at a future meeting.

5 APPROVAL OF MINUTES

6 Delegate Landes returned to agenda item 2, Review and Approval of Minutes.
7 On line 36 of page 2 of the minutes, Judge Goodwyn suggested clarifying that
8 the 10% increase requested for the print Virginia Administrative Code was for an
9 increase in the price charged for the print version of the Code. In addition, Judge
10 Goodwyn asked that the minutes be clarified on line 14 of page 4 by specifying
11 fall of 2006 as the goal for making the new statutory Code framework available
12 on the Internet. Mr. Moncure made a motion to approve the minutes, as
13 amended. Judge Goodwyn seconded the motion and it was approved.

14 TITLE 3.1 RECODIFICATION (CONTINUED)

15 Chapter 33, Milk Commission

16 A motion was made and seconded to repeal § 3.1-428 on page 5, thereby
17 removing the requirement that the Milk Commission's principal office be located
18 in the City of Richmond. The motion was approved.

19 In the definition of "sanitary regulations" on page 3, a motion was made and
20 seconded to clarify that "sanitary regulations" include "regulations adopted by the
21 Board of Agriculture and Consumer Services and local health authorities." The
22 motion was approved.

23 In § 3.1-437 on page 9, a motion was made and seconded to change the word
24 "fix," to "establish" when referring to setting the price of milk. The motion was
25 approved.

26 In § 3.1-432 on page 8, line 9, a motion was made a seconded to change the
27 word "that" to "whether." The motion was approved.

28 There was a discussion of the meaning of "classes" of milk. Milk Commission
29 staff stated that the different classes of milk are defined in regulation. Staff was
30 asked to review the definition of milk on page 2 and ensure that the definition is
31 inclusive of everything that is included in "class."

32 On page 15, § 3.1-447, a motion was made a seconded to change the drafting
33 note so that it indicates that the section is being deleted as being unnecessary.
34 The motion was approved.

35 Section 3.1-118 sets out the procedures for appeals. A motion was made and
36 seconded to change the requirement that appeals be made to the circuit court of
37 the City of Richmond to filing appeals with the circuit court in which the
38 commission's office is located, and to make the same change on page 18, line 11
39 in § 3.1-451. The motion was approved.

1 On page 20, line 3, § 3.1-458, a motion was made and seconded to strike the
2 phrase "in the City of Richmond." The motion was approved.

3 The Commission discussed how to handle unclassified penalties (see § 3.1-438
4 on page 12 and § 3.1-459 on page 20). Mr. Ferguson noted that § 3.1-459
5 provides a catch-all penalty provision for any violations of the chapter, while
6 § 3.1-438, which is in the same chapter, provides a different penalty for violations
7 of that section only. It was noted that the chapterwide penalty in § 3.1-459 is less
8 stringent than the Class 1 misdemeanor proposed in § 3.1-438. Mr. Miller
9 suggested removing the penalty provision from § 3.1-438 so that the penalty in
10 § 3.1-459 would apply. Mr. Miller made a motion, seconded by Delegate Hurt, to
11 change § 3.1-438 beginning on page 12, by replacing the last two sentences
12 with, "It shall also be unlawful for any distributor to fail or refuse to use the
13 system of accounting herein prescribed or to refuse to allow the same to be
14 inspected or audited," and to rewrite § 3.1-459 on page 20 to read:

15 *"Any person violating any provision of this chapter or of any license*
16 *issued by the Commission shall be guilty of a Class 2*
17 *misdemeanor. Each day during which such violation shall continue*
18 *shall be deemed a separate violation. Prosecutions shall be*
19 *instituted by the attorney for the Commonwealth."*

20 The motion carried.

21 Chapter 34, Southern Dairy Compact

22 It was pointed out that the Southern Dairy Compact (§§ 3.1-461.1 through
23 361.461.4) is not currently in effect because the federal government has not
24 recognized it. A certain number of states must adopt the compact before it will be
25 considered by Congress. Although enough states have adopted the compact,
26 Congress has not passed it yet.

27 In conformance with Code Commission policy, staff will remove the Southern
28 Dairy Compact from the main volume of the Code and retain it in the Compacts
29 Volume. The Code publisher will be asked to cross-reference the compact in the
30 main volume and indicate that the text of the compact may be found in the
31 Compacts Volume.

32 Chapter 53, Milk, Milk Products and Dairies

33 In § 3.1-420 on page 1, line 15, the dairy industry has suggested changing
34 "secure the proper feeding and care of cows" to "promote the proper feeding
35 and care of cows," rationalizing that it is too subjective for one person to decide
36 if cattle is fed properly or not. Senator Edwards made a motion to change
37 "secure" to "promote" as suggested. Mr. Ferguson seconded the motion and the
38 motion was approved.

39 The Commission discussed conformance and integration of penalty language
40 with that of other chapters. The Farm Bureau stated its preference to keep
41 penalty provisions separate, but to make the processes consistent. Staff was

1 asked to attempt to assign misdemeanor classifications to the unclassified
2 penalties, take the issue up with the workgroup, and bring recommendations to
3 the Commission for review.

4 Mr. Ferguson advised staff to change all references to "imprisonment in jail" to
5 "confinement in jail."

6 There was a discussion about the intent (exchange with intent to defraud) of
7 § 3.1-423, penalty for adulterating milk. Senator Mims suggested that § 3.1-423
8 be rewritten in modern terminology and asked the dairy industry representatives
9 and the department if they would be willing to take on this task. Donna Johnson
10 with the Virginia Agribusiness Council indicated that rewriting the section could
11 be controversial and encumber the recodification. Delegate Hurt asked when
12 someone was last prosecuted under § 3.1-423. The agency representative
13 responded that he was not aware of anyone ever being prosecuted under the
14 section. Staff will work with the industry and agency representatives to rewrite
15 Article 1.

16 At this time, the Chairman suspended agenda item 5 and returned to agenda
17 item 4, Reorganization and Renumbering of the Code of Virginia.

18 2007 CODE PROJECT

19 Global Changes - Technical Aspects

20 Bill Wilson offered the option of incorporating the global changes that were
21 approved at a previous meeting into the 2005 Code of Virginia drafting database,
22 which also appears on the General Assembly website. Mr. Wilson emphasized
23 that choosing this option would cause the printed code to be out of conformance
24 with the online code. The Code Commission discussed the advantages and
25 disadvantages of proceeding with this option and whether there was any harm in
26 incorporating the changes now. Mr. Moncure commented that the Code
27 Commission is already encountering a large amount of skepticism with regard to
28 this project and he does not believe that it would be a very good public relations
29 move. The decision was deferred until after the 2006 General Assembly Session.
30 The Commission plans to reconsider the issue prior to July 2006.

31 Title Reorganization Proposal

32 Ken Patterson presented the proposed title reorganization of the current Virginia
33 Code titles. The proposed reorganization groups the titles by subject matter and
34 arranges most divisions alphabetically. Within the divisions, titles are listed in
35 current numerical order; however, this is not proposed as a final arrangement
36 within divisions. Once the title reorganization is approved, the next step is
37 assignment of titles and numbers. Mr. Patterson pointed out that the work group
38 is not necessarily comfortable with the classification of "Housing" within "Health,
39 Housing and Human Services" and suggested that it might be better to separate
40 "Housing" into its own division.

1 The Commission discussed the proposed title reorganization and made several
2 suggestions for placement of certain titles. Many comments were made for
3 consideration, including splitting Title 16.1, which contains both court procedures
4 and court structure, into two separate divisions; adding a Jurisprudence division
5 to include Title 8.01, part of Title 16.1, part of Title 17.1, and maybe Title 19.2;
6 moving Title 19.2 to Division 4 (Crimes and Corrections); moving Title 53.1 to
7 Division 12 (Corrections); moving Titles 47.1 and 49 from Executive Branch and
8 Judicial Branch, respectively, to General Provisions in Division 1 (State
9 Government); adding independent agencies under Division 1; reworking "Judicial
10 Branch" under Division 1; removing Title 51.1 from "Executive Branch" since the
11 Virginia Retirement System is an independent agency and possibly adding a
12 "State Employees" or "Benefits" subdivision under Division 1; and splitting Title
13 15.2 into two titles. Based on the discussion, Mr. Patterson will incorporate the
14 suggestions, circulate another draft, and bring the proposal back to the
15 Commission at its next meeting for further review.

16 Pat Davis explained how the reorganization would occur. A form has been
17 devised for DLS staff to use in setting out the current organization of a title by
18 chapter and article. Only chapter and article headings will be noted; section text
19 will not be included. A separate form will be used to set out the proposed
20 organization of a title by chapter and article.

21 Summer Work Plan

22 Pat Davis presented the work plan for the summer. During the summer, titles will
23 be assigned to drafters, drafters will study the organization of the titles, and
24 drafters will propose a reorganization for each title, as necessary. The proposed
25 title reorganizations will be presented to the 2007 Code Work Group for comment
26 as they are completed. Individual title reports will be presented to the
27 Commission with the goal of finishing all titles on a preliminary basis by the
28 October Code Commission meeting.

29 Next year, organization of individual sections within articles and chapters will
30 occur.

31 **TITLE 3.1 RECODIFICATION (CONTINUED)**

32 The Chairman stated that the remainder of the Title 3.1 recodification that was
33 suspended earlier will be deferred until the July meeting.

34 **OTHER BUSINESS AND PUBLIC COMMENT**

35 Because of meeting conflicts for staff preparing the Title 3.1 recodification, the
36 July 20 meeting will need to be rescheduled. Staff was asked to poll the
37 membership for a new July meeting date.

38 No one came forward during the designated public comment period.

39 The meeting adjourned at 3:05 p.m.